

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:) Conf. No.: 5968
BREINING, Scott R., et al.)
Serial No.: 10/711,969) Examiner: O'DELL, David K.
Filed: October 15, 2004) Art Unit: 1625
For: Pharmaceutical Compositions and) Docket No.: T103 1580.1
Methods for Relieving Pain and Treating)
Central Nervous System Disorders)

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

(37 C.F.R. §§ 1.705 and 1.18(e))

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants respectfully request that the Determination of Patent Term Adjustment mailed with the Notice of Allowance dated March 10, 2008 be reconsidered.

Pursuant to 37 C.F.R. § 1.18(e), the Commissioner is authorized to charge the fee of \$200.00 for filing the Request to our Deposit Account No. 09-0528. If any further fee is due, please consider this as authorization to charge such fee.

The Patent Term Adjustment calculation resulting in the asserted 500 days of favorable adjustment is believed to be incorrect. The correct amount of favorable adjustment due is believed to be 502 days. More specifically, the asserted Applicant Delay of 2 days (as noted on the public PAIR system) is incorrect.

Applicants filed the present application on October 15, 2004. The PTO mailed a Restriction Requirement on May 1, 2007, resulting in 502 days of favorable adjustment. The Restriction Requirement set a shortened statutory period for reply of one (1) month or thirty (30) days, whichever is longer, as the period for reply.

As shown on the attached Patent Term Adjustment History, the PTO assigned Applicants' response to the Restriction Requirement as August 3, 2007. That date, August 3, 2007, is the day the USPTO received Applicants' response, as shown by the OIPE stamp on the attached copy of the return post card for this submission.

To the contrary, Applicants responded on July 31, 2007. Applicants response included a Certificate of Mailing, certifying the July 31, 2007 date in accordance with 37 C.F.R. §2.197. A copy of the Certificate of Mailing is attached hereto for reference. The applicable date is the filing date, and not the date the submission was received by the Office. As such, the date to be accorded to Applicants' response is July 31, 2007.

In accordance with the remaining requirements as set forth in 37 C.F.R. §1.705(b), the present application is not subject to a terminal disclaimer. Further, there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the present application.

The two (2) days attributed to Applicant Delay is in error. The accurate amount of PTA for this case is 502 days. Reconsideration and correction of the PTA determination is respectfully requested. Should the Office have any questions about this request, Applicants' representative may be reached by telephone as herein provided.

Respectfully submitted

Amy H. Fix

Amy H. Fix

Registration No. 42,616

5/19/08

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P. O. Box 7037
Atlanta, Georgia 30357-0037
(919) 484-2314 (direct phone)
(919) 484-2071 (direct facsimile)

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